

1. Whether claimant was an independent contractor or an employee of HDM, Inc., or Derek McCloud at the time the injury occurred?
2. If it is determined that claimant is an employee, was he working for HDM, Inc., or Derek McCloud at the time of the injury?
3. Is HDM, Inc., or Derek McCloud subject to coverage by the Kansas Workers Compensation Act and, if coverage exists, are the entities insolvent?
4. Did claimant make a timely written claim for compensation within the meaning of K.S.A. 44-520a?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds that the Order of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Order of the Administrative Law Judge are factual and appropriate and the Appeals Board adopts the same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

The findings by the Administrative Law Judge that claimant was an employee of Derek McCloud in his individual capacity is supported by the evidence in the record. No employment tie between claimant and HDM, Inc., and the property at 709 North Grand can be found in the record.

The further finding by the Administrative Law Judge that Derek McCloud, in his individual capacity, did not have a total gross annual payroll for the preceding calendar year and will not for the current calendar year of more than \$20,000 for all employees and is not subject to the provisions of the Kansas Workers Compensation Act is supported by the credible evidence in the record. As such, the denial of benefits for preliminary hearing purposes, should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated April 29, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1997.

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BOARD MEMBER

c: James S. Oswalt, Hutchinson, KS  
Daniel J. Shanelec, Lyons, KS  
Jeffrey E. King, Salina, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director